

defendant's request for transfer. See Lafferty, 495 F.3d at 76 ("Section 1404(a) transfers are discretionary determinations made for the convenience of the parties and presuppose that the court has jurisdiction and that the case has been brought in the correct forum.").

A motion to transfer under §1404(a) requires the district court to perform a case-specific analysis and to weigh all relevant factors in determining whether on balance the litigation would more conveniently proceed and the interests of justice would be better served by the requested transfer to a different forum. Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995). The analysis is flexible and must be guided by the facts and circumstances of the case. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 249-50 (1981); Van Dusen v. Barrack, 376 U.S. 612, 623 (1964); Sandvic, Inc. v. Continental Ins. Co., 724 F. Supp. 303, 307 (D. N.J. 1998).

Where the plaintiff has chosen a legally correct forum which is the forum of the plaintiff's residence, there is a strong presumption in favor of the plaintiff's choice which should not be lightly disturbed. Shutte v. Armco Steel Co., 431 F.2d 22, 25 (3d Cir. 1970), cert. denied, 401 U.S. 910 (1971). However, such deference to the plaintiff's choice of forum is not dispositive, especially when it is in contravention to the parties' privately agreed upon forum. See Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29 (U.S. 1988) ("The presence of a forum-selection clause such as the parties entered into in this case will be a significant factor that figures centrally in the district court's calculus."); Jumara, 55 F.3d at 880 ("Thus, while courts normally defer to a plaintiff's choice of forum, such deference is inappropriate where the plaintiff has already freely contractually chosen an appropriate venue."). Where the opponent of the forum selection clause has not established "fraud, influence, or overweening bargaining power," ... the [opponent] bear[s] the burden of demonstrating why [the parties] should not be bound by their contractual choice of forum." Id (quoting The Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 12-13 (1972)).

Under the terms of the defendant's purchase orders, plaintiff consented to an exclusive forum selection clause that mandated suit in the United States District Court for the Northern

District of Ohio or an appropriate Ohio state court. As there is nothing in the record that demonstrates fraud, influence, or unequal bargaining power, plaintiff bears the burden of establishing why the court should not transfer the case in accordance with the parties' contractually agreed upon forum.

Plaintiff has not met its burden. Plaintiff has merely established that the Western District of Pennsylvania is a convenient forum; it has not demonstrated that the Northern District Ohio would be an inconvenient forum. Thus, the forum selection clause is enforceable. See Salovaara v. Jackson National Life Ins. Co., 246 F.3d 289, 298-300 (3d Cir. 2001) (recognizing "forum selection clause" providing that "[n]o such claim shall be commenced, prosecuted or continued in any forum other than the courts of the State of New York located in the City and County of New York or in the United States District Court for the Southern District of New York" as a clear and unambiguous expression of parties' selection of an exclusive forum); Crescent International, Inc. v. Avatar Communities, Inc., 857 F.2d 943, 944 (3d Cir. 1988) (enforcing as exclusive "forum selection clause" provision in real estate contract mandating that "any litigation upon any of [the agreement's] terms ... shall be maintained" in a state or federal court in Miami, Florida). Accordingly, defendant's motion to transfer to the United States District Court for the Northern District of Ohio pursuant to 28 U.S.C. §1404(a) appropriately has been granted.¹

s/ David Stewart Cercone
David Stewart Cercone
United States District Judge

¹Although the defendant has made a 12(b)(6) motion requesting dismissal as a means of enforcing the parties' forum selection clause, this court is exercising its discretion to transfer pursuant to §1404(a). See Salovaara v. Jackson Nat'l Life Ins. Co., 246 F.3d 289, 299 (3d Cir. 2001) ("We acknowledge that, as a general matter, it makes better sense, when venue is proper but the parties have agreed upon a not-unreasonable forum selection clause that points to another federal venue, to transfer rather than dismiss.").

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